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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 02 085 54072 Office: Vermont Service Center Date: MAY 12 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a mortgage banker. It seeks to employ the beneficiary permanently as a market research analyst. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is January 31, 2001.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of market research analyst required a Bachelor's degree in Banking or Marketing Management. The labor certification did not state that any other level of education would satisfy the requirement.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree and denied the petition.

On appeal, counsel argues that "the beneficiary does, in fact, qualify for the position of Market Research Analyst, based upon his education equivalence. The beneficiary's experience has been evaluated to be the equivalent of an individual with a bachelor's degree in business administration and said evaluation was provided to the Service."

The record contains an educational evaluation from [redacted] Ph.D. which states that the beneficiary has "achieved the

equivalent of a Bachelor's of Business Administration (B.B.A.) Degree."

Counsel argues that "[t]he INS rejection of experience as a substitute for a degree for the EB-3 professional category is contrary to the requirements for the H1-B visa for professionals."

A candidate may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act based on a degree equivalency composed of work experience and education. Neither the statute nor the regulations allow for "work equivalency" of a bachelor's degree for this immigrant classification. Here, the evaluation erroneously relies on the nonimmigrant regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) to claim that three years of work experience may be substituted for a year of education in an immigrant petition. For this immigrant classification, a beneficiary must possess an actual baccalaureate degree to meet the requirements stipulated by the petitioner on the labor certification.

The Bureau will not accept a degree equivalency when a labor certification plainly and expressly requires a candidate with a specific degree. To determine whether a beneficiary is eligible for a third preference immigrant visa, the Bureau must ascertain whether the alien is in fact qualified for the certified job. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany v. Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon,* 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey,* 661 F.2d 1 (1st Cir. 1981). Here, block 14 of the Form ETA-750 plainly states that a bachelor's degree is the minimum level of education required to adequately perform the certified job. As the beneficiary has not earned a bachelor's degree, he does not qualify for the certified position. Accordingly, the beneficiary is not eligible for classification under Section 203(b)(3) as either a skilled worker or a professional, based on the current labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.